IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.993 OF 2006

M/s.Quality Herbal Products Pvt.Ltd. Petitioner
vs.
Union of India & ors. Respondents

Mr.Vidyadhar Apte i/b.Mr.Ajay A. Joshi for the petitioner.

Mr.A.S.Rao with Mr.A.M.Sethna i/b.Dr.T.C.Kaushik for the respondents.

CORAM : R. M. LODHA &
J. P. DEVADHAR,JJ.

DATED : 10th April, 2006

P.C.

Heard Mr.Vidyadhar Apte, the counsel for the petitioner.

2. The petitioner preferred appeal against the order in original dated 30th November, 2005 passed by the Joint Commissioner, Central Excise, Belapur. By the said order, the Joint Commissioner, Central Excise confirmed the demand of Rs.5,74,894/- with interest and imposed a penalty of equal amount on the present appellant.

3. Along with the appeal, the petitioner made the application for waiver of pre-deposit under Section 35F of the Act. The notice of personal hearing was served upon the petitioner, but nobody appeared on behalf of

the petitioner. The Appellate Authority considered the application and taking overall facts and circumstances of the case ordered pre-deposit of 50% of the duty demanded and 50% of the penalty imposed in the impugned order. The order of pre-deposit dated 7th March, 2006 is impugned in the present writ petition.

4. The submission of the counsel for the petitioner is that two appeals were preferred by the two separate appellants against the order in original dated 30th November, 2005. Though the petitioner did receive the notice of personal hearing fixed on 2nd March, 2006, since the other appellant did not receive the notice, the application for adjournment was made but the Appellate Authority has inaccurately mentioned that no application for adjournment was made and passed an order at the back of the petitioner in violation of principles of natural justice.

5. We are not persuaded by the submission of the counsel for the petitioner. That the petitioner received the notice that the matter was fixed on 2nd March, 2006 is not in dispute. Merely because in the other appeal, that was filed by the other appellant, the said appellant had not received the notice for personal hearing that did not justify an application for adjournment being made by the petitioner. In any case,

the appellant ought to have appeared on 2nd March, 2006 before the Appellate Authority and if any adjournment was needed, such prayer ought to have been made before the Appellate Authority on 2nd March, 2006. Despite the notice, the petitioner did not appear before the Appellate Authority. It did so at its own peril. In our view, the impugned order dated 7th March, 2006 cannot be said to be in breach of principles of natural justice.

6. No case for invocation of extraordinary jurisdiction is made out.

7. Writ petition is dismissed in limine. However, in the interest of justice, we grant time of four weeks now to the petitioner to make deposit as per the order dated 7th March, 2006 failing which the appeal shall stand dismissed for want of non-compliance.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)